

119TH CONGRESS  
1ST SESSION

# S. 1064

To preserve open competition and Federal Government neutrality towards the labor relations of Federal Government contractors on Federal and federally funded construction projects, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

MARCH 13, 2025

Mr. YOUNG (for himself, Mr. TUBERVILLE, Mr. CRUZ, Mr. CORNYN, Mr. HAGERTY, Mr. CRAPO, Mr. BUDD, Ms. LUMMIS, Mr. WICKER, Mr. CRAMER, Mrs. BRITT, Mr. LANKFORD, Mr. GRAHAM, Mr. GRASSLEY, Mrs. BLACKBURN, Mr. RISCH, and Mr. TILLIS) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

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## A BILL

To preserve open competition and Federal Government neutrality towards the labor relations of Federal Government contractors on Federal and federally funded construction projects, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Fair and Open Com-  
5 petition Act” or the “FOCA Act”.

1 **SEC. 2. PURPOSES.**

2 It is the purpose of this Act to—

3 (1) promote and ensure open competition on  
4 Federal and federally funded or assisted construc-  
5 tion projects;

6 (2) maintain Federal Government neutrality to-  
7 wards the labor relations of Federal Government  
8 contractors on Federal and federally funded or as-  
9 sisted construction projects;

10 (3) reduce construction costs to the Federal  
11 Government and to the taxpayers;

12 (4) expand job opportunities, especially for  
13 small and disadvantaged businesses; and

14 (5) prevent discrimination against Federal Gov-  
15 ernment contractors or their employees based upon  
16 labor affiliation or the lack thereof, thereby pro-  
17 moting the economical, nondiscriminatory, and effi-  
18 cient administration and completion of Federal and  
19 federally funded or assisted construction projects.

20 **SEC. 3. PRESERVATION OF OPEN COMPETITION AND FED-**  
21 **ERAL GOVERNMENT NEUTRALITY.**

22 (a) PROHIBITION.—

23 (1) GENERAL RULE.—The head of each execu-  
24 tive agency that awards or enters into any construc-  
25 tion contract or that obligates funds pursuant to  
26 such a contract, shall ensure that the agency, and

1 any construction manager acting on behalf of the  
2 Federal Government with respect to such contract,  
3 in its bid specifications, project agreements, or other  
4 controlling documents does not—

5 (A) require or prohibit a bidder, offeror,  
6 contractor, or subcontractor from entering into,  
7 or adhering to, agreements with 1 or more  
8 labor organizations, with respect to that con-  
9 struction project or another related construction  
10 project; or

11 (B) discriminate against or give preference  
12 to a bidder, offeror, contractor, or subcon-  
13 tractor because such bidder, offeror, contractor,  
14 or subcontractor—

15 (i) becomes a signatory, or otherwise  
16 adheres to, an agreement with 1 or more  
17 labor organizations with respect to that  
18 construction project or another related  
19 construction project; or

20 (ii) refuses to become a signatory, or  
21 otherwise adhere to, an agreement with 1  
22 or more labor organizations with respect to  
23 that construction project or another related  
24 construction project.

1           (2) APPLICATION OF PROHIBITION.—This sub-  
2 section shall apply with respect to—

3           (A) contracts awarded on or after the date  
4 of the enactment of this Act; and

5           (B) subcontracts awarded under such con-  
6 tracts.

7           (3) RULE OF CONSTRUCTION.—Nothing in  
8 paragraph (1) may be construed to prohibit a con-  
9 tractor or subcontractor from voluntarily entering  
10 into an agreement described in such paragraph.

11           (4) FEDERAL ACQUISITION REGULATION.—Not  
12 later than 60 days after the date of the enactment  
13 of this Act, the Federal Acquisition Regulation shall  
14 be revised to implement the provisions of this sub-  
15 section.

16           (b) RECIPIENTS OF GRANTS AND OTHER ASSIST-  
17 ANCE.—The head of each executive agency that awards  
18 grants, provides financial assistance, or enters into cooper-  
19 ative agreements for construction projects after the date  
20 of the enactment of this Act shall ensure that—

21           (1) the bid specifications, project agreements,  
22 or other controlling documents for such construction  
23 projects of a recipient of a grant or financial assist-  
24 ance, or by the parties to a cooperative agreement,  
25 do not contain any of the requirements or prohibi-

1 tions described in subparagraph (A) or (B) of sub-  
2 section (a)(1); or

3 (2) the bid specifications, project agreements,  
4 or other controlling documents for such construction  
5 projects of a construction manager acting on behalf  
6 of a recipient or party described in paragraph (1) do  
7 not contain any of the requirements or prohibitions  
8 described in subparagraph (A) or (B) of subsection  
9 (a)(1).

10 (c) FAILURE TO COMPLY.—If an executive agency,  
11 a recipient of a grant or financial assistance from an exec-  
12 utive agency, a party to a cooperative agreement with an  
13 executive agency, or a construction manager acting on be-  
14 half of such an agency, recipient, or party, fails to comply  
15 with subsection (a) or (b), the head of the executive agency  
16 awarding the contract, grant, or assistance, or entering  
17 into the agreement involved, shall take such action, con-  
18 sistent with the law, as the head of such agency deter-  
19 mines to be appropriate.

20 (d) EXEMPTIONS.—

21 (1) IN GENERAL.—The head of an executive  
22 agency may exempt a particular project, contract,  
23 subcontract, grant, or cooperative agreement from  
24 the requirements of 1 or more of the provisions of  
25 subsections (a) and (b) if the head of such agency

1 determines that special circumstances exist that re-  
2 quire an exemption in order to avert an imminent  
3 threat to public health or safety or to serve the na-  
4 tional security.

5 (2) SPECIAL CIRCUMSTANCES.—For purposes  
6 of paragraph (1), a finding of special circumstances  
7 may not be based on the possibility or existence of  
8 a labor dispute concerning contractors or sub-  
9 contractors that are nonsignatories to, or that other-  
10 wise do not adhere to, agreements with 1 or more  
11 labor organizations, or labor disputes concerning em-  
12 ployees on the project who are not members of, or  
13 affiliated with, a labor organization.

14 (3) ADDITIONAL EXEMPTION FOR CERTAIN  
15 PROJECTS.—The head of an executive agency, upon  
16 application of an awarding authority, a recipient of  
17 grants or financial assistance, a party to a coopera-  
18 tive agreement, or a construction manager acting on  
19 behalf of any of such entities, may exempt a par-  
20 ticular project from the requirements of any or all  
21 of the provisions of subsection (a) or (b), if the head  
22 of such agency finds—

23 (A) that the awarding authority, recipient  
24 of grants or financial assistance, party to a co-  
25 operative agreement, or construction manager

1 acting on behalf of any of such entities had  
2 issued or was a party to, as of the date of the  
3 enactment of this Act, bid specifications, project  
4 agreements, agreements with 1 or more labor  
5 organizations, or other controlling documents  
6 with respect to that particular project, which  
7 contained any of the requirements or prohibi-  
8 tions set forth in subsection (a)(1); and

9 (B) that 1 or more construction contracts  
10 subject to such requirements or prohibitions  
11 had been awarded as of the date of the enact-  
12 ment of this Act.

13 (e) DEFINITIONS.—In this section:

14 (1) CONSTRUCTION CONTRACT.—The term  
15 “construction contract” means any contract for the  
16 construction, rehabilitation, alteration, conversion,  
17 extension, or repair of buildings, highways, or other  
18 improvements to real property.

19 (2) EXECUTIVE AGENCY.—The term “executive  
20 agency” has the meaning given the term “Executive  
21 agency” in section 105 of title 5, United States  
22 Code, except that such term does not include the  
23 Government Accountability Office.

24 (3) LABOR ORGANIZATION.—The term “labor  
25 organization” has the meaning given such term in

1 section 701 of the Civil Rights Act of 1964 (42  
2 U.S.C. 2000e).

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